

Notice of Allowability	Application No.	Applicant(s)	
	10/715,917	MONTGOMERY, R. ERIC	
	Examiner	Art Unit	
	Frederick Krass	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment dated 02/03/06.
2. ☒ The allowed claim(s) is/are 28-41, 45, 48, 51, 52 and 59-72.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>05/26/06</u>. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
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 Frederick Krass
 Primary Examiner
 Art Unit: 1614

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Quinlan on May 26, 2006.

The following changes have been made:

1) In the specification, page 29, line 37, immediately after "1998" there has been inserted --- , now USP 6,312,670 ---

2) Claim 28, last line, immediately after "carrier" there has been inserted --- further ---

3) Claim 28, last line, immediately after "comprising" there has been inserted --- a ---

4) Claim 28, last line, "flavorants" has been changed to --- flavorant --

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5) Claim 28, last line, "sweeteners" has been changed to --- sweetener ---

6) Claim 28, last line, immediately before the period ending the claim there has been inserted --- , wherein said flavorant improves the palatability and oral acceptability of said composition ---

7) Claim 71, first line, "58" has been changed to --- 59 ---

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The claims remain allowable for the reasons given previously.

The amendment to claim 28 specifying that the flavorant improves palatability and oral acceptability was made to emphasize the inventive concept, and thus provide a further line of demarcation over the bleaching compositions of USP 3,901,819. (The prior art discloses components, e.g., perfumes at column 2, line 44, which would not improve palatability or improve oral acceptability (they would in fact do the opposite), but which could theoretically be deemed "flavorants" (albeit having an unpleasant taste and mouthfeel) in the broadest sense).

Moreover, Applicant has demonstrated unexpected results for the use of the instantly claimed compositions in whitening teeth. Although believed not necessary to establish patentability based on the facts of record, these results are noted as further

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evidence in support of patentability. Specifically, the use of a combination of 1) hydrogen peroxide and 2) a compound containing labile acetyl groups (such as triacetin) as a precursor mixture for the *in situ* generation of peroxyacetic acid permits the sequential administration of each of 1) and 2) to the tooth surface (the particular and unique methods specified by instant method claims 45 and 48), which provides unexpectedly increased bleaching efficacy as outlined by the instant specification at pages 7 and 8 of the specification. See also the passage bridging the bottom of page 9 and the top of page 10, as well as page 12, lines 10-20. (The observations made there are factually verified by the comparative data presented in the instant working examples).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached on Monday-Friday from 9:30AM to 6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marschel Ardin, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614

